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CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES

DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan corporation,
Appellant,

vs.

CORPORATION TAX APPEAL BOARD OF MICHIGAN,
Appellee.

No. 51
October Term, 1931.

STATEMENT OF DETROIT INTERNATIONAL BRIDGE COMPANY, APPELLANT, SETTING FORTH THE BASIS ON WHICH THE REVIEW OF THE JUDGMENT OF THE SUPREME COURT OF MICHIGAN IS INVOKED ON APPEAL.

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THOMAS G. LONG,
VICTOR W. KLEIN,
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Detroit International Bridge Company.

CONWAY-SCOTT COMPANY, LAW PRINTERS, DETROIT, MICH

IN THE

SUPREME COURT OF THE UNITED STATES

DETROIT INTERNATIONAL BRIDGE COMPANY, a Michigan corporation,
Appellant,

vs.

CORPORATION TAX APPEAL BOARD OF MICHIGAN,
Appellee.

No. 908
October Term, 1931.

STATEMENT OF DETROIT INTERNATIONAL BRIDGE COMPANY, APPELLANT, SETTING FORTH THE BASIS ON WHICH THE REVIEW OF THE JUDGMENT OF THE SUPREME COURT OF MICHIGAN IS INVOKED ON APPEAL.

(The clerk having notified counsel that the record as filed would not be available in printed form for a period of more than thirty days, all references to the record pages made herein will be found in the printed record of the case before the Michigan Supreme Court which is included in the transcript of the record filed with this Court.)

This is an appeal from the judgment entered by the Supreme Court of the State of Michigan, the court of highest jurisdiction in the State of Michigan, entered on April 5th, 1932. The application of the Detroit International Bridge Company, the appellant, for leave to appeal to the United States Supreme Court was also filed on April 5th, 1932, after the entry of the judgment. The order allowing the appeal was signed and entered by the Chief Justice of the Supreme Court of the State of Michigan on April 5th, 1932.

It is the contention of the Detroit International Bridge Company that the United States Supreme Court has jurisdiction to review on appeal the judgment entered by the Supreme Court of the State of Michigan on April 5th, 1932, under the provisions of the Judicial Code, Section 237, United States Code Annotated, Title 28, Section 344.

This case was appealed to the Supreme Court of the State of Michigan (in a proceeding in the nature of a certiorari proceeding) to review the determination of the Corporation Tax Appeal Board of the State of Michigan, to which Board the appellant, Detroit International Bridge Company, appealed from the computation of the Secretary of State for the State of Michigan, of the annual privilege fees for the years of 1929 and 1930. The obligation of the appellant to pay the tax for 1930, however, is the only one before this court on this appeal.

The Detroit International Bridge Company, the appellant, is a corporation organized under the laws of the State of Michigan, with its principal office at Detroit, Wayne County, Michigan. Article III of the Articles of Association of the Detroit International Bridge Company provides:

> "The purpose or purposes of this corporation are as follows:
>
> To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan to Sandwich, Province of Ontario, Canada, and the approaches thereto;
>
> To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

The Detroit International Bridge Company, the appellant, has continuously since October 1929 itself operated said bridge for vehicular and pedestrian traffic across the Detroit River, a navigable stream, from Detroit, Michigan to Sandwich, Ontario, Canada, and has engaged exclusively in such business and in no other (R. 5).

The Detroit International Bridge Company, the appellant, contended that the corporation was not subject to the payment of the annual privilege fee under Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan because that statute imposed an annual tax upon corporations for the privilege of *doing* business (as distinguished from the privilege of *being* or continuing to exist or *to be* a corporation); because the powers of appellant corporation were limited under its corporate charter and pursuant thereto it did and could engage only in the carrying on of this business of foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foreign commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

The nature of Act No. 85 of the Public Acts of 1921, of the State of Michigan, the tax statute here in question, has been carefully analyzed and defined by the Supreme Court of Michigan in a case in which the validity of the statute was attacked as being repugnant to certain provisions of the Constitution of the State of Michigan. The Supreme Court of Michigan, in that case, *Union Steam Pump Sales Company vs. Secretary of State of Michigan*, 216 Mich. 261, held "that it is not a property tax, but is a tax on the franchise to do business as a corporation within the state".

Distinguishing the franchise "to be" a corporation from the franchise of doing business as a corporation, the Michigan Supreme Court, after quoting at length from numerous authorities and text writers, summarized, page 272, saying:

> "These authorities demonstrate beyond cavil that there is a distinction and a well recognized one between the franchise to be a corporation and the franchise to do business as a corporation. *One is the franchise 'to be', the other the franchise 'to do'.* One belongs to the corporators, the other to the corporation. . . . The franchise 'to do' (belonging to the corporation) may follow the franchise 'to be' (belonging to the corporators). But each is a different franchise as the authorities above cited demonstrate and the taxation of one is not the taxation of the other, the sources of revenue are not the same, the subjects of taxation are not the same."

It was concluded by the Court, at page 268, that "The law here under consideration levies a specific tax upon the right, the franchise *to do* business as a corporation."

It was necessary for the Michigan Supreme Court in the *Union Steam Pump Sales Company* case to carefully distinguish between the two different corporate franchise taxes in that the proceeds of the tax were payable to the school fund under the State Constitution if the tax were upon the privilege *to be* a corporation, whereas payments under Act No. 85 of the Public Acts of 1921, here in question, were to be credited to the general fund, and the validity of the act could only be sustained if this was a tax imposed for the privilege of *doing* business as a corporation.

The Detroit International Bridge Company, the appellant, had, upon its organization, paid the organization fee to the State of Michigan for the privilege of *being* a corporation and once this privilege fee is paid upon organization there is no provision under the Michigan laws under which a further tax for this privilege of *being* is imposed. The annual privilege fee, Act No. 85 of the Public Acts of 1921, as amended, on the other hand, as has been determined by the Michigan Supreme Court and as is apparent from the language of the statute, is for the privilege of *doing* business as a corporation. It is for the privilege of doing business for which this tax is imposed upon corporations.

The Detroit International Bridge Company, the appellant, claimed and contended that Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, of the State of Michigan, so far as applied to it, is unconstitutional in that the Act attempted to impose a tax upon it for the privilege of doing business when the only business it did and could do as a corporation under its charter was to engage exclusively in foreign commerce, and that to uphold the validity of the Act as applied to it would be an improper interference with and regulation of foreign commerce by the State of Michigan, and thereby violates the power of Congress, to regulate foreign commerce as provided in Article I, Section 8, Clause 3 of the Constitution of the United States.

These questions were raised in the appeal to the Supreme Court of the State of Michigan in the manner and form required under the practice of said court (R. 12, 19), and said questions were considered at length by said Supreme Court of the State of Mich-

igan. The contentions of the appellant that the application of the statute as made by the Secretary of State and as applied to it was in violation of the Commerce Clause (Article I, Section 8, Clause 3) of the Constitution of the United States were expressly overruled by the judgment and the opinion rendered by said Supreme Court of the State of Michigan (257 Mich. 52; 240 N. W. 68).

It is the contention of the appellant, Detroit International Bridge Company, that this court has jurisdiction of this appeal under the provisions of the Judicial Code, Section 237, United States Code, Annotated, Title 28, Section 344, that in the final judgment of the Supreme Court of the State of Michigan, which is the highest court of that state, there has been drawn in question the validity of a statute of the State of Michigan on the ground that it is repugnant to the Constitution of the United States and because the decision of the Supreme Court of Michigan is in favor of the validity of said statute. See *General Oil Company vs. Crain*, 209 U. S. 211, 28 Sup. Ct. 475, 52 L. Ed. 754; *Atlantic Coast Line Railroad Co. vs. Wharton*, 207 U. S. 328, 28 Sup. Ct. 121, 52 L. Ed. 230.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1932

No. 51

DETROIT INTERNATIONAL BRIDGE COMPANY,
APPELLANT,

vs.

CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN

Appeal from the Supreme Court of the State of Michigan.

BRIEF FOR DETROIT INTERNATIONAL BRIDGE COMPANY

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CORPORATION TAX APPEAL BOARD OF THE STATE OF MICHIGAN

Appeal from the Supreme Court of the State of Michigan.

BRIEF FOR DETROIT INTERNATIONAL BRIDGE COMPANY

OPINION BELOW

The opinion of the lower court—the Supreme Court of the State of Michigan (R. 57-63)—is reported in 257 Mich. 52, 240 N. W. 68.

JURISDICTION

A statement of the Detroit International Bridge Company, appellant, setting forth the basis on which the review of the judgment of the Supreme Court of Michi-

gan is here invoked on appeal has been heretofore filed with this Court in this cause in compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States.

STATEMENT

The Detroit International Bridge Company, the appellant, is a corporation organized under the laws of the State of Michigan, with its principal office at Detroit, Wayne County, Michigan. The purpose and power of this corporation was to construct, and upon completion of the construction, to operate, a bridge for vehicular and pedestrian traffic across the Detroit River, a navigable stream, from Detroit, Michigan, to Sandwich, Ontario, Canada. Under the provisions of Article III of the Articles of Association of the Detroit International Bridge Company, the powers of the corporation were limited solely to these purposes:

> "The purpose or purposes of this corporation are as follows:
>
> To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada, and the approaches thereto;
>
> To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use."

Permission and authority for the construction of the American portion of this bridge was granted by an Act of Congress, approved March 4th, 1921, and amended subsequently by several later Acts of Congress. Permission and authority for the construction of the Canadian portion of the bridge was granted to the Canadian Trans-

it Company, a subsidiary of Detroit International Bridge Company, which owns the Canadian portion of the bridge, by an Act of Parliament of the Dominion of Canada, finally approved by the Governor General of Canada on March 31st, 1927.

The appellant, Detroit International Bridge Company, the American company, owns the bridge structure up to the middle of the Detroit River. The Canadian Transit Company owns the other portion of the bridge structure from Canada to the center of the river. All of the stock of the Canadian Transit Company, the subsidiary company, is owned by the American company, the Detroit International Bridge Company, the appellant. The Canadian Transit Company leased the Canadian portion of the bridge to the parent company, the Detroit International Bridge Company, and the appellant, the Detroit International Bridge Company operates the entire bridge, including the Canadian portion of the structure as one operating unit from Detroit to Canada and from Canada to Detroit, having the obligation to maintain and keep in repair the entire bridge structure.

Upon the completion of the construction of this bridge in October, 1929, and continuously thereafter, the Detroit International Bridge Company, appellant, has itself, through its own officers and employees, operated this bridge, all vehicular and pedestrian traffic being permitted the use thereof upon payment of toll as approved by the War Department. Limited by its corporate powers and purpose the Bridge Company has engaged exclusively in the carrying on of this business since October, 1929, and in no other.

Upon incorporation in 1927, the Detroit International Bridge Company paid the Secretary of State for the State of Michigan the franchise or organization fee for the privilege of *being* a corporation under Act #85 of

the Public Acts of 1921, Secs. 3 and 3A, as amended by Act #33 of the Public Acts of 1927. Distinguished from this organization or franchise fee which is paid for the privilege of bringing into being, for the privilege of being or continuing to exist or to be a corporation, Michigan also imposes an annual privilege fee upon corporations being Sections 4 and 5 of Act #85 of the Public Acts of 1921, as amended by Act #175 of the Public Acts of 1929, Sections 4 and 5. As will be pointed out hereinafter, this annual privilege fee is imposed upon domestic and foreign corporations for the privilege of exercising corporate franchises within the State, and for the privilege of doing business in Michigan.

After the Detroit International Bridge Company, the appellant, had commenced to operate this international bridge it contended that it was not subject to the payment of the annual privilege fee for the privilege of doing business in Michigan, because the powers of appellant corporation were limited under its corporate charter and pursuant thereto it did and could engage only in the carrying on of this business of foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foreign commerce in violation of Article I, Section 8, Clause 3 of the Constitution of the United States.

This issue was first raised by the Detroit International Bridge Company, the appellant, in an appeal to the Corporation Tax Appeal Board for the State of Michigan, involving its obligation to pay the privilege fee for the year 1930. That Board also had before it other questions involving both the 1929 and 1930 tax which are not here in issue. From the ruling of the Tax Appeal Board the Detroit International Bridge Company appealed to the Supreme Court of Michigan (in a proceeding in the na-

ture of a certiorari proceeding). This appeal is from the judgment entered by the Supreme Court of the State of Michigan and only involves the one constitutional question having to do with the obligation of the appellant to pay the annual privilege tax for the year 1930.

SPECIFICATION OF ERRORS TO BE URGED AND QUESTION PRESENTED

The question here presented to the Court is set forth in the two Assignments of Error filed by the appellant in lodging this appeal. Both Assignments of Error are here urged, as follows:

> (1) The Supreme Court of the State of Michigan erred in holding (a) that Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929 of the State of Michigan (Sections 10140, 10143, 10144 and 10145 of the Compiled Laws of Michigan, 1929, inclusive) is constitutional in application to plaintiff and its business, (b) said Act, so far as applied to plaintiff, does not violate Article I, Section 8, Clause 3, of the Constitution of the United States, and (c) in applying said statute and imposing the privilege fee for the year 1930 upon plaintiff, the State of Michigan did not unduly interfere with and thereby usurp or violate the power of Congress of the United States to regulate such foreign commerce as is provided by Article I, Section 8, Clause 3, of the Constitution of the United States.
>
> (2) The tax imposed by Section 4 of said Act No. 85 of the Public Acts of 1921, as amended by Section 4 of Act No. 175 of the Public Acts of 1929 of the State of Michigan, not being imposed on the privilege to be a corporation (such tax being imposed by Section 3 of said Act No. 85 of the Public Acts of 1921, as amended by Section 3 of Act No. 175 of the Public Acts of 1929, but be-

ing imposed on the privilege to do the business for which organized and such business of the plaintiff being solely and exclusively the maintenance and operation of an instrumentality of foreign commerce, viz., an international highway toll bridge such privilege (as distinguished from the privilege to be organized as a corporation with power to do such business if permitted by the competent authority) is not grantable by or otherwise within the competency of the State of Michigan, but is solely within the jurisdiction of Congress under Article I, Section 8, Clause 3 of the Constitution of the United States and the Supreme Court of the State of Michigan erred in not holding said Section 4 of said Act not applicable to plaintiff and its business or not valid under said provision of the United States Constitution if so applied.

MICHIGAN STATUTES INVOLVED

The question here to be determined on this appeal is whether or not the statute providing for the payment of an annual privilege fee by corporations can be constitutionally applied to, and whether this annual tax can be validly imposed upon, the appellant corporation. The section of the statute in question, Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, is:

> "Sec. 4. Privilege fee, Basis of. Every corporation organized or doing business under the laws of this state, excepting railroad companies and interurban railroad companies, and telephone and telegraph companies, express companies and foreign insurance companies shall, at the time of filing its annual report with the secretary of state of this state, as required by section five of chapter two of part five of act number eighty-four of the public acts of nineteen hundred twenty-one, for the

> privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state an annual fee of two and one-half mills upon each dollar of its paid-up capital and surplus, but such privilege fee shall in no case be less than ten dollars nor more than fifty thousand dollars. It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporation franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

Section 3 of Act No. 85 of the Public Acts of 1921, in force at the time the appellant corporation was organized, provided for the payment by every domestic corporation organized for profit and every foreign corporation applying for admission to do business within the State "of an organization fee—for the privilege of exercising its franchise within the state." This organization tax was paid by the Detroit International Bridge Company to the State upon incorporation. This provision of the Act, Sec. 3, reads as follows:

> "Sec. 3. Every domestic corporation hereafter organized for profit, and every foreign corporation for profit hereafter applying for admission to do business within this state, shall at the time of filing its articles or applying for admission, as the case may be, pay to the secretary of state, as an organization fee and for the privilege of exercising its franchises within this state, a sum equal to one mill upon the dollar for each dollar of the authorized capital stock of such corporation; and each corporation heretofore or hereafter incorporated under the laws of or admitted to do business in this state, shall pay a proportionate fee upon each and any increase in its authorized capital stock made subsequent to the passage of this act. - - -"

Section 3 of Act No. 175 of the Public Acts of 1929, in force in 1929, having similar provisions, except that the franchise fee imposed under that act was reduced to one-half mill. The other language in this section of the statute is identical.

ARGUMENT

There are two major issues here involved. The appellant, Detroit International Bridge Company, contends:

> (1) that by owning, operating and maintaining the Detroit International bridge for vehicular and pedestrian traffic across the Detroit River, a navigable stream, from Detroit, Michigan, to Sandwich, Ontario, Canada, that it is and has been engaged exclusively in the business of foreign commerce;
>
> (2) that the Detroit International Bridge Company, the appellant, was not subject to the payment of the annual privilege fee for the year 1930 under sections 4 and 5 of Act No. 85 of the Public Acts of 1921, as amended by Act No. 175 of the Public Acts of 1929, sections 4 and 5, because that statute imposed an annual tax upon corporations for the privilege of *doing* business (as distinguished from the privilege of *being* or continuing to exist or *to be* a corporation); because the powers of appellant corporation were limited under its corporate charter and pursuant thereto it did and could engage only in the carrying on of this business of foreign commerce, and to impose this annual privilege tax upon it would be to impose a tax upon it for the privilege of engaging exclusively in foreign commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

The Appellant, Detroit International Bridge Company, by owning, operating and maintaining the International Bridge from Detroit, Michigan, to Canada was engaged exclusively in foreign commerce.

The appellant, Detroit International Bridge Company, upon the completion of the bridge structure was the owner of the Detroit International Bridge and was engaged in maintaining and operating this highway bridge for the passage of vehicular and pedestrian traffic from Detroit, Michigan, to Sandwich, Ontario, Canada, charging and collecting tolls for the passage of traffic thereover.

Under the provisions of Article 3 of the Articles of Association of the Detroit International Bridge Company the powers vested in the corporation were limited solely to these purposes:

> To construct, own and/or operate a highway bridge across the Detroit River from Detroit, Michigan, to Sandwich, Province of Ontario, Canada and the approaches thereto;
>
> To maintain and operate such bridge and the approaches thereto for the use of vehicular and pedestrian traffic, and to charge and collect tolls for such use.

Upon the completion of the bridge in 1929, and continuously thereafter, the Detroit International Bridge Company, the appellant, has, through its own officers and employees, maintained and operated this bridge. Not having other corporate powers or purpose the appellant engaged in no other business whatsoever.

Although in the court below, counsel for the Corporation Tax Appeal Board of Michigan, the appellee, con-

tended that the appellant in maintaining and operating this international highway bridge was not engaged in the business of foreign commerce, the Michigan Supreme Court in considering this constitutional question raised by the appellant apparently treated this argument of the Tax Appeal Board as being without merit, because in its opinion it treated only the question of whether or not a privilege fee, such as is here involved, if applied to appellant corporation would violate the Commerce Clause of the United States. If the Michigan Supreme Court had found merit in this contention of the Tax Appeal Board, it would have been unnecessary to consider the constitutional question at all, since there could be no interference with foreign commerce if the appellant were not engaged in foreign commerce.

The Michigan Supreme Court in considering the nature of the Detroit International Bridge in the case of *Detroit International Bridge Co. v. American Seed Co.*, 249 Mich. 289, at 298, 228 N. W. 791, 794, held that:

> "The Federal government is interested in it by virtue of its constitutional authority over navigation, interstate and foreign commerce and post roads."

The Michigan court both in that case and in the present case treated the business of the appellant company as being engaged in the business of foreign commerce.

The case of *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S. 204, is here controlling. In that case the Covington & Cincinnati Bridge Company was organized under the laws of both Ohio and Kentucky, and built and itself operated (as does the Detroit International Bridge Company) a bridge spanning the Ohio River, charging toll for vehicular and pedestrian traffic crossing over this structure. Kentucky enacted

certain laws in reference to the toll rate and operation of the bridge, which the Bridge Company in that case contended was in violation of the Commerce Clause of the Federal Constitution. According to Mr. Justice Brown of the United States Supreme Court, at pg. 217, there were two questions which had to be decided, being:—

> "First, whether such traffic across the river is interstate commerce; and second, whether a bridge can be considered an instrument of such commerce.
>
> The first question must be answered in the affirmative upon the authority of *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, in which the State of Pennsylvania attempted to tax the capital stock of a corporation whose entire business consisted in ferrying passengers and freight over the river Delaware between Philadelphia, in Pennsylvania, and Gloucester, in New Jersey. This traffic was held to be interstate commerce, and inasmuch as it appeared that the ferry boats were registered in New Jersey and were taxable there, it was held that there was no property held by the company which could be the subject of taxation in Pennsylvania, except the lease of a wharf in that State.
>
> - - - With reference to the second question, an attempt is made to distinguish a bridge from a ferry boat, and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. Commerce was defined in *Gibbons v. Ogden*, 9 Wheat 1, 189, to be 'intercourse,' and the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool. While the bridge company is not itself a common carrier, it affords a highway for

> such carriage, and a toll upon such bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon traffic of such turnpike, or the charges upon a ferry a tax upon the commerce across a river. A tax is laid upon those who do the business of common carriers upon a certain bridge is as much a tax upon the commerce of that bridge as if the owner of the bridge were himself a common carrier."

Counsel for the Tax Appeal Board, the appellee, rely on the case of *Henderson Bridge Company v. Kentucky*, 166 U. S. 150, and *Arkansas & Memphis Ry. Bridge & Terminals Co. v. State*, 174 Ark. 420, 295 S. W. 378 (certiorari having been denied by the Supreme Court, 275 U. S. 548), in support of their contention that the appellant is not engaged in foreign commerce. Both of these cases are readily distinguishable from the case at bar.

In the *Henderson Bridge* case the Bridge Company maintained and operated a bridge structure across the Ohio River from Kentucky to Indiana. The Bridge Company was a corporation organized under the laws of Kentucky. The Bridge Company rented out the use of this railroad bridge to various railroad companies. The State of Kentucky, under the general tax laws, levied a tax upon the Bridge Company covering both its tangible and intangible property. Included in the assessment for intangible property was the franchise granted by the State of Kentucky to the incorporators for the privilege of being a Kentucky corporation, and the tax board there fixed a value of that franchise as an intangible asset of the corporation subject to taxation. The Bridge Company contended that the tax was a franchise tax or a privilege tax for the privilege of engaging in this interstate business, and being a tax upon the privilege of doing business violated the Commerce Clause of the United

States. The court by a majority opinion, four of the Justices joining in a vigorous dissent, decided as appears on pg. 154 of the opinion:

> "The tax in controversy was nothing more than a tax on the intangible property of the Company in Kentucky."

The majority treated the tax as a direct personal property tax, including this franchise as an intangible asset. Clearly even though the bridge were engaged in interstate commerce, it was then and is now well decided that a direct property tax may be imposed by a sovereignty upon corporate assets located within that sovereignty, even though those assets are used exclusively in interstate commerce. *St. Louis & East St. Louis Ry. Co. v. State of Missouri*, 256 U. S. 314; *United States Express Company v. Minnesota*, 223 U. S. 335; *Fargo v. Hart*, 193 U. S. 490; *Postal Telegraph & Cable Co. v. Charleston*, 153 U. S. 692, 700. The statement of the court on page 153, that the tax was not a tax on interstate commerce carried on by means of the bridge because the bridge did not transact such business, was unnecessary to that decision and is not now binding upon the court. Treating the tax as a direct property tax as distinguished from the tax for the privilege of doing business within the state as a corporation, like the tax in the case at bar, the decision of the Supreme Court in the *Henderson* case would necessarily have been the same regardless of whether the Bridge Company were engaged in interstate commerce or not.

Four of the Justices joining in the dissenting opinion of the minority in the *Henderson* case differed from the majority of the court in determining the nature of the Kentucky tax, as well as on the question of whether or not the Bridge Company was engaged in interstate com-

merce. The minority of the court treated the Kentucky tax as a pure franchise or privilege tax, as distinguished from a direct property tax and submitted that in its opinion that this tax being imposed upon the privilege of doing the business in question and was unconstitutional as being a direct imposition of a tax for the privilege of doing interstate business.

The majority of the court in the *Henderson* case did not, by its opinion, consider the *Covington & Cincinnati Bridge Company* case overruled. On page 153 the court said:

> "The regulation of tolls for transportation over the bridge considered in *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S. 204, presented an entirely different question."

The *Covington* case is applicable to the case at bar. A regulation of tolls is a regulation of the doing of business over the bridge. In the case at bar an imposition of a privilege fee for the privilege of doing business, when the only business of the company is operating an international highway bridge of this character, is a regulation of foreign commerce. On the other hand, as has been pointed out hereinbefore, property of a corporation located within a state, though used in interstate commerce, may be subject to a direct property tax. Following this rule, the majority of the court in the *Henderson* case, treating the tax as a direct property tax on a portion of property (the value of the franchise) said to be located in the taxing state of Kentucky, held the tax not to be a burden upon interstate commerce. If the tax in the *Henderson* case were a privilege tax, as the minority of the court held it to be, then it would be imposed for the privilege of doing the interstate business and would be unconstitutional, just as the tax in the case at bar is unconstitutional.

The *Arkansas* case can be distinguished because there the Bridge Company did not itself operate the bridge, but leased the structure to other persons, who in turn operated the structure. As the court in the *Arkansas* case, said referring to the appellant, said ,at page 425:

> "*It does not operate the bridge and does not carry either passengers or goods, in fact it does nothing in the way of commerce, either intrastate or interstate.* It owns, leases repairs and maintains the bridge across the Mississippi river, and, while the bridge may be an instrumentality of interstate commerce so far as the carriers are concerned, the bridge company has nothing whatever to do with carrying either freight or passengers and therefore does not use the bridge as an instrumentality for interstate commerce or any other kind of commerce."

And further at page 426:

> "As we have said, the bridge company merely owns the bridge, *leases* it and maintains it. If a company owned a boat or a number of boats, and leased them to a carrier or to any person or corporation who used the boat in carrying persons or freight in interstate commerce, the boat would be used in interstate commerce, the carrier would be engaged in interstate commerce, but the owner of the boat would have no connection whatever with interstate commerce. And we therefore think that the bridge company in this case is not engaged in interstate commerce, and it is not engaged in the operation of an instrumentality used in interstate commerce."

In the case at bar the Detroit International Bridge Company itself operates the bridge. It engages in the foreign commerce of transporting people across the Detroit River over and upon its highway structure. The transporting of vehicles and persons from one country

to another over a highway structure is as much engaging in foreign commerce as though they were transported by boat or train.

It is apparently impossible to sustain the position of counsel for the Corporation Tax Appeal Board in their contention that the appellant is not engaged in foreign commerce, with other more recent and controlling decisions of the United States Supreme Court.

It has been held that one engaged in maintaining in proper condition a bridge used as an instrumentality of interstate commerce is engaged in interstate commerce. In the case of *Pedersen v. Delaware, Lackawanna & Western Rd. Co.*, 229 U. S. 146, one carrying materials to be used in repairing a bridge over which interstate trains moved was held to be engaged in interstate commerce, Mr. Justice Van Devanter, delivering the opinion of the court, there said among other things, at pg. 151:

> "Tracks and bridges are as indispensable to interstate commerce by railroad as are engines and cars, and sound economic reasons unite with settled rules of law in demanding that all of these instrumentalities be kept in repair. The security, expedition and efficiency of the commerce depends in large measure upon this being done. - - - The work of keeping such instrumentalities in a proper state of repair while thus used is so closely related to such commerce as to be in practice and in legal contemplation a part of it."

One engaged in cooking meals, making beds, etc., for a gang of bridge carpenters in a camp car which was provided and moved from place to place along the railroad line to facilitate their work in repairing bridges over which interstate trains moved was held to be engaged in interstate commerce. *Philadelphia, Baltimore & Washington Railroad Company v. Smith*, 250 U. S. 101.

The court said, at pg. 103:—

> "Taking it to be settled by the decision of this court in *Pedersen v. Delaware, Lackawanna & Western R. R. Co.*, 229 U. S. 146, 152, that the repair of bridges in use as instrumentalities of interstate commerce is so closely related to such commerce as to be in practice and in legal contemplation a part of it, it of course is evident that the work of the bridge carpenters in the present case was so closely related to defendant's interstate commerce as to be in effect a part of it."

In *Kinzell v. Chicago Milwaukee & St. Paul Ry. Co.*, 250 U. S. 130, it was held that one engaged in connection with the construction of a fill to replace a trestle (bridge) over which interstate trains moved was engaged in interstate commerce.

This court has gone so far to hold that *ownership only* of a railroad *wholly within one state leased* to a railroad company doing interstate business and having exclusive possession and control for a yearly money rental would subject the lessor owner to liability as being engaged in interstate commerce, where an injury was sustained by an employee in the course of movement by the lessee railroad of a train of wholly empty cars. *North Carolina Railroad Company v. Zachary*, 232 U. S. 248.

In *State vs. Bates & Rogers Construction Company*, 91 Wash. 183, 157 Pac. 483, employes of an *independent contractor* constructing piers under and for the support of a bridge on the line of the Spokane International Railroad Company over which interstate and foreign traffic moved were held to be engaged in interstate and foreign commerce.

There is one point of substantial difference between the cases just discussed and the case at bar. In those cases

the bridge (or other physical property) was capable of use in intrastate as well as interstate commerce. In the case at bar the bridge is impossible of use in other than foreign commerce. From the very inception of its construction it has been exclusively an instrumentality of foreign commerce—physically incapable of any other use.

A company owning and operating ferry boats carrying passengers from one state to another or from this country to another has been held by this court to be engaged in the business of interstate and foreign commerce. *Glouster Ferry Co. v. Pennsylvania*, 114 U. S. 196; *City of Sault Ste. Marie v. International Transit Co.*, 234 U. S. 333; *Mayor of Vadalia v. McNeeley*, 274 U. S. 676.

A company owning and operating a pipe line for gas or oil from one state to or through another state has been held by this court on several occasions to be engaged in the business of interstate commerce. *Ozark Pipe Line Corporation v. Monier, the State Tax Commission of Missouri*, 266 U. S. 555; *Eureka Pipe Line Co. v. Hallanan*, 257 U. S. 265; *United Fuel & Gas Co. v. Hallanan*, 257 U. S. 277.

To hold that the spanning of a stream by ferry boats from the shore of one state to that of another, or the spanning of distances by pipe lines through which gas or oil flows is interstate commerce, and on the other hand to contend, as does the Corporation Tax Appeal Board, that the spanning of the distance by a bridge over a navigable stream over which vehicles and pedestrians travel from the shore of one state to that of another state or country is not interstate or foreign commerce is to raise a fine distinction with no essential difference. The position is inconsistent and unsupportable.

The Detroit International Bridge Company, the appellant, transports passengers and vehicles over this

structure as much as a ferry company, by its boats, transports its passengers, or as much as a pipe line company transports oil or gas. If the bridge were a swing or draw bridge actually moving and lifting the passengers and vehicles from one shore to another, that contention could not be raised. To hold that a swinging or draw bridge would thereby constitute the appellant's business as that of foreign commerce, and a stationary bridge, such as the one here involved, would not be foreign commerce, merely emphasizes the fine hairpoint distinction counsel for the appellee attempt to make. As has been pointed out hereinabove, this court has ruled out any attempt to distinguish a bridge from a ferry boat on the ground that one is movable and the other is a fixture in the *Covington Bridge Company* case, *supra*.

The Detroit International Bridge Company, the appellant, owning, operating and maintaining this highway bridge from Detroit, Michigan, to Sandwich, Ontario, Canada, must be held to be engaged in foreign commerce.

The Detroit International Bridge Company is Not Subject to the Annual Privilege Tax. The Corporation, Limited by Its Corporate Charter has Been and Is Engaged Exclusively in Foreign Commerce, and to Impose the Annual Tax upon It for the Privilege of Engaging in this Foreign Commerce would be in Violation of Article 1, Section 8, Clause 3, of the Constitution of the United States.

The Supreme Court of the State of Michigan erred in holding that the imposition of the annual privilege fee upon the Detroit International Bridge Company, the appellant, under Act No. 85 of the Public Acts of 1921 as amended by Act No. 175 of the Public Acts of 1925 of

the State of Michigan, Sections 3 and 4, was not in violation and in contravention of Article 1, Section 8, Clause 3 of the Constitution of the United States.

As has been pointed out hereinabove, Detroit International Bridge Company, the appellant, has been and is exclusively engaged in the business of operating this international bridge, and restricted by its corporate power to this purpose, has and could engage in no other business whatever except the carrying on of this foreign commerce.

The nature of Act No. 85 of the Public Acts of 1921, of the State of Michigan, the tax statute here in question, has been carefully analyzed and defined by the Supreme Court of Michigan in a case in which the validity of the statute was attacked as being repugnant to certain provisions of the Constitution of the State of Michigan. The Supreme Court of Michigan, in that case, *Union Steam Pump Sales Company vs. Secretary of State of Michigan*, 216 Mich. 261, held "that it is not a property tax, but is a tax on the franchise to do business as a corporation within the state".

Distinguishing the franchise "to be" a corporation from the franchise of doing business as a corporation, the Michigan Supreme Court, after quoting at length from numerous authorities and text writers, summarized, page 272, saying:

> "These authorities demonstrate beyond cavil that there is a distinction and a well recognized one between the franchise to be a corporation and the franchise to do business as a corporation. *One is the franchise 'to be', the other the franchise 'to do'.* One belongs to the corporators, the other to the corporation. . . . The franchise 'to do' (belonging to the corporation) may follow the franchise 'to be' (belonging to the corporators). But

> each is a different franchise as the authorities above cited demonstrate and the taxation of one is not the taxation of the other, the sources of revenue are not the same, the subjects of taxation are not the same."

It was concluded by the Court, at page 268, that "The law here under consideration levies a specific tax upon the right, the franchise *to do* business as a corporation."

The privilege tax in question in the case at bar is, therefore, imposed upon the privilege of doing business and is unlike the annual privilege tax imposed in many states upon the privilege of being, or continuing to be, a corporation. The case of *Kansas City, Fort Scott & Memphis Ry. Co. v. State of Kansas*, 240 U. S. 227, is different from the case at bar, because in that case the annual privilege fee was imposed upon the privilege of being, or continuing to be, a corporation rather than on the privilege of doing business as a corporation. If the annual privilege tax in the case at bar were likened to that imposed in the *Kansas City* case, it would be in violation of the Michigan Constitution because the receipts from this tax are payable to a different fund than is provided under the Michigan Constitution, under the ruling of the *Union Steam Pump Sales Co.* case, *supra*. It was necessary for the Michigan Supreme Court in the *Union Steam Pump Sales Company* case to carefully distinguish between the two different corporate franchise taxes in that the proceeds of the tax were payable to the school fund under the State Constitution if the tax were upon the privilege *to be* a corporation, whereas payments under Act No. 85 of the Public Acts of 1921, here in question, were to be credited to the general fund, and the validity of the act could only be sustained if this was a tax imposed for the privilege of *doing* business as a corporation.

It is clear that this annual privilege fee is imposed upon domestic corporations not for the privilege of continuing to exist or to be a corporation, as is the nature of the tax in many states, but rather is a tax imposed upon the corporation for the privilege of doing business, which the corporation is empowered to do under its corporate charter. This court has so declared itself in a recent examination of this statute imposing the annual privilege fee upon corporations in the case of *People of the State of Michigan vs. Michigan Trust Company*, 52 Sup. Ct. 512.

The Detroit International Bridge Company, the appellant, had, upon its organization, paid the organization fee to the State of Michigan for the privilege of *being* a corporation and once this privilege fee is paid upon organization there is no provision under the Michigan laws under which a further tax for this privilege of *being* is imposed. The annual privilege fee, Act No. 85 of the Public Acts of 1921, as amended, on the other hand, as has been determined by the Michigan Supreme Court and as is apparent from the language of the statute, is for the privilege of *doing* business as a corporation. To hold that this annual privilege fee was for the privilege of being or continuing to be a corporation would be to violate the Michigan Constitution under the decision of the *Union Steam Pump Sales Company* case (*supra*).

The Detroit International Bridge Company, as has been pointed out heretofore, is restricted by its corporate charter to the business of exclusively maintaining and operating this international passenger and vehicular highway bridge. The Bridge Company can and has operated, and will and can only continue to operate, exclusively in this business of carrying on of foreign commerce so long as its corporate powers are confined by its charter exclusively to this business. For the State by

this act to impose an annual tax upon the Detroit International Bridge Company for the privilege of doing business, when the only business it can carry on is that of foreign commerce, is clearly in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, which provides that:—

> "The Congress shall have power - - - to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

The principle of Constitutional law, that a state can not impose a tax or fee upon interstate and foreign commerce is too firmly established to require the voluminous citation of authorities that pronounce the rule. It should suffice to refer to a few leading cases. This principle was broadly announced in the *Minnesota Rate* cases, 230 U. S. 352, at pg. 400 as follows:—

> "Thus, the States cannot tax interstate commerce, either by laying the tax upon the business which constitutes such commerce or *the privilege of engaging in it*, or upon the receipts (see numerous authorities there cited)."

Ozark Pipe Line Corporation vs. Monier, et. al., 226 U. S. 555 (*supra*), constituting the State Tax Commission of the State of Missouri, and cases therein cited.

The determination of this Court of the case of *Philadelphia & Southern Steamship Company vs. Pennsylvania*, 122 U. S. 327, 7 Sup. Ct. 1118, 30 L. Ed. 1200, and of the case of *Ozark Pipe Line Corporation vs. Monier, et. al.*, (*supra*), should be controlling of the issues here involved. In the *Philadelphia & Southern Steamship Company* case the Steamship Company engaged exclusively in the business of operating sea-going steamships for ocean transportation between the different states of the United States by way of the ocean, and between the

United States and foreign countries. The state of Pennsylvania enacted a law whereby it attempted to impose a tax upon the gross receipts of such companies, derived from the transportation of persons and property by sea between different states and to and from foreign countries. The Philadelphia & Southern Steamship Company was a domestic corporation organized under the laws of Pennsylvania. As Mr. Justice Bradley, speaking for the Supreme Court, announced at pg. 335:—

> "The question which underlies the immediate question in the case is, whether the imposition of the tax upon the steamship company's receipts amounted to a regulation of, or an interference with, interstate and foreign commerce, and was thus in conflict with the power granted by the Constitution to Congress."

The Court held, at pg. 336, that:—

> "The transportation was an act of interstate and foreign commerce. It was the carrying on of such commerce. It was that, and nothing else. In view of the decisions of this Court, it cannot be pretended that the state could constitutionally regulate or interfere with that commerce itself. But taxing is one of the forms of regulation. It is one of the principal forms. Taxing the transportation, either by its tonnage, or its distance, or by the number of trips performed, or in any other way, would certainly be a regulation of the commerce, a restriction upon it, a burden upon it. Clearly this could not be done by the state without interfering with the power of Congress. Foreign commerce has been fully regulated by Congress, and any regulations imposed by the states upon that branch of commerce would be a palpable interference."

In commenting upon this case and in attempting to distinguish it from the case at bar, the Michigan Supreme Court in its opinion said:

> "The tax was levied upon the gross receipts of a steamship company. . . ."

thereby leaving the inference that such a tax was to be distinguished from the imposition of an annual privilege tax. It must be noted, however, that in the *Steamship Company* case a large portion of the opinion of the Court was devoted to the consideration of the tax imposed upon the Steamship Company as being in the nature of a franchise tax. It was contended by the State of Pennsylvania in that case that the tax was upon the franchise of the corporation granted to it by the State. And commenting upon this issue, the Court, at pg. 342, said:—

> "If intended as a tax on the *franchise of doing business*,—which in this case is the business of transportation in carrying on interstate and foreign commerce,—it would clearly be unconstitutional. It was held by this Court in the case of *Gloucester Ferry Company v. Pennsylvania*, 114 U. S. 196, that interstate commerce carried on by corporations is entitled to the same protection against state exactions which is given to such commerce when carried on by individuals."

So to summarize, if this annual tax imposed by Pennsylvania upon the Steamship Company, measured by its gross receipts, was in the nature of a privilege tax for doing business, as was contended by the Attorney General of Pennsylvania, such a tax, according to the ruling of the United States Supreme Court in that case, would be unconstitutional and in violation of the Commerce Clause. The issues there determined are identical to those presented to the Court in the case at bar.

It undoubtedly will be contended by Counsel for the Secretary of State and the Corporation Tax Appeal Board that in view of the 1929 amendment and the ruling in the case of *G. H. Hammond Company*, 246 Mich. 179 (quoting part of the 1929 amendment), that:

> "It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporate franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period."

That provision of the statute is applicable only to domestic corporations which have the power to engage in business other than interstate and foreign business under their corporate charters, regardless of whether they so operate or not. In the case at bar, as has been pointed out, the Detroit International Bridge Company has no power to engage in any business but that of foreign commerce. This Company is restricted by its corporate charter to operating this international highway bridge and can not engage in any other business whatever. How then can the state impose a tax for the privilege of doing other than international business when the Bridge Company is restricted from engaging in any other business but that of foreign commerce?

It is contended by the Corporation Tax Appeal Board and the Secretary of State that the Detroit International Bridge Company could not do this business as a Michigan corporation unless given the privilege of so doing by the State of Michigan. As has been pointed out hereinbefore, the Detroit International Bridge Company, the appellant, has already paid the State of Michigan the organization fee, the only fee that can be imposed under the Mich-

igan statutes for the privilege of being or continuing to be or exist as a Michigan Corporation. The annual privilege fee is for the privilege of doing the business of a corporation granted under the corporate charter. The same question was raised and held not of weight in the *Philadelphia & Southern Steamship Company* case, at page 343, as well as in the case of *Gloucester Ferry Co. v. Pennsylvania,* 114 U. S. 196, (*supra*).

As was decided in the case of *Sault Ste. Marie v. International Transit Company,* 234 U. S. 333, 340, (*supra*), a state may not make commercial intercourse with another state or a foreign country a matter of local privilege, and require that it can not be carried on without its consent, or exact a fee as the price of its consent for the privilege of doing this interstate foreign business.

The case of *Ozark Pipe Line Corporation vs. Monier* (*supra*) can not be distinguished and is conclusive upon the question here before the Court for determination. In that case the State of Missouri attempted to impose an annual privilege tax upon the Ozark Pipe Line Corporation for the privilege of doing business in the State. The nature of the Missouri tax was similar to that of the Michigan annual privilege tax. It was imposed on a corporation for the privilege of doing business in the State, as distinguished from such privilege taxes as are imposed by some states for the privilege of being, or continuing to be, a corporation. The Ozark Pipe Line Corporation was a foreign corporation, the sole business of which was to transport crude oil from one state to another through its pipe lines. It engaged exclusively in interstate commerce. In Missouri it carried crude oil through its pipes from one state, through Missouri, to another state. The United States Supreme Court held

that this tax was unconstitutional. Mr. Justice Sutherland, speaking for the Court, at page 562, stated:

> "The tax is one upon the privilege or right to do business, *State Ex rel. v. State Tax Commission*, 282 Mo. 213, 234; *and if appellant is engaged only in interstate commerce it is conceded, as it must be, that the tax, so far as appellant is concerned, constitutionally cannot be imposed.* It long has been settled that a State cannot lay a tax on interstate commerce in any form, whether on the transportation of subjects of commerce, the receipts derived therefrom, or the occupation or business of carrying it on."

This Court recently followed the same rule in the case of *State Tax Commission of Mississippi vs. Interstate Natural Gas Company*, 52 Sup. Ct. 62.

The Michigan Supreme Court, in its opinion in the case at bar, attempted to distinguish the *Ozark Pipe Line* case and the *Interstate Natural Gas Company* case with the observation that

> "The state sought to enforce a statute providing for the collection of such a tax on corporations not organized under its laws and exclusively engaged in interstate commerce."

However, the United States Supreme Court in the *Monier* case held that this same rule must apply to a domestic corporation, where the tax sought to be imposed is one upon the privilege of doing business and the only business done or that can be done by the domestic corporation is interstate or foreign business. Commenting on this point, Mr. Justice Sutherland speaking for the court said at page 567:

> "Nor is it material that appellant applied for and received a Missouri license or that it had the

> power thereunder to exercise the right of eminent domain. These facts could not have the effect of conferring upon the State an authority, denied by the Federal Constitution, to regulate interstate commerce. *The State has no such power even in the case of domestic corporations. See Philadelphia S. S. Co. v. Pennsylvania,* 122 U. S. 326, 342. The statute as applied to appellant is unconstitutional."

The argument was made in the case of *Philadelphia & Southern Steamship Company v. Pennsylvania, supra,* that although this tax for the doing of interstate or foreign business could not be imposed upon a foreign corporation, it might nevertheless be imposed upon a domestic corporation, which derives its powers from the State. The Court in the *Philadelphia & Southern Steamship Company* case, at page 344 said:

> "The decision in this case and the reasoning on which it is founded so far as they relate to the taxation of interstate commerce carried on by corporations, *apply equally to domestic and foreign corporations.* No doubt the capital stock of the former, regarded as inhabitants of the state, or their property, may be taxed as other corporations and inhabitants are, provided no discrimination be made against them as corporations carrying on foreign or interstate commerce, so as to make the tax, in effect, a tax on such commerce. But their business as carriers in foreign or interstate commerce cannot be taxed by the state, under the plea that they are exercising a franchise."

We are not unmindful of the case *In re Detroit & Windsor Ferry Company,* 232 Mich. 574. That case is not here controlling and furthermore can readily be distinguished from the case at bar. The judgment by the Michigan Supreme Court (not carried up on appeal for

determination by this court) on the question of whether or not the application of a statute contravened the Federal constitution is not binding upon this court. This rule is too fundamental to require the citation of authorities. In the *Detroit & Windsor Ferry Company* case the Federal question was never appealed to this Court for determination, and at all events the *Detroit & Windsor Ferry Company* case can be readily distinguished. In that case the business of the Ferry Company was not restricted exclusively to foreign commerce. A portion of its business was devoted to intrastate business, that is, operating a ferry service to and from Belle Isle, which is a part of the City of Detroit. The Detroit and Windsor Ferry Company could and did engage in intrastate commerce and had the ability and power under its charter and the purposes therein enumerated and granted, to devote itself to business other than purely foreign or interstate commerce.

In the case at bar the Detroit International Bridge Company is restricted by the corporate powers granted to it by its charter to operate an international highway bridge, and under these limited powers, it can engage in no business other than that of this foreign commerce.

A corporation only possesses such powers as are expressly enumerated in and granted to it by its charter as limited by its Articles of Association. The corporation has no inherent rights such as belong to individuals. Its activities must be confined specifically to those powers granted to it under its charter and the very grant of enumerated powers of necessity excludes any other powers not therein mentioned. This is the general and prevailing rule of law in this country. *Thompson on Corporations*, 3rd Ed. Vol. 3, Sec. 2183; *Fletcher Cyc. Corporations*, Vol. 2, Secs. 775 and 784. And this is and has been the prevailing rule in Michigan since the earliest

times. In the case of *Bank of Michigan v. Miles,* 1 Douglas (Michigan) 401, the doctrine is forcibly pronounced at page 403 as follows:—

> "In these cases the grant of power is before us. The charter defines the grant, with its restrictions and limitations. - - -
>
> A corporation, says Ch. J. Marshall, being the mere creature of law, possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence: *Trustees of Dartmouth College v. Woodward,* 4 Wheat., 518. The same doctrine is asserted by McLean J., in *Beatty v. Knowles' Lessee,* 4 Pet., 152, and is, in effect, contained in all the American cases on the subject. - - -
>
> In determining on the extent of such power in a particular instance, under a charter, we are to look at the grant and restriction; and, unless the power is found in the charter, it cannot be considered as possessed. The very grant of specified powers under restrictions, is an exclusion of other powers in reference to the same subject matter, not granted by the charter."

See *Orr v. Lacey,* 2 Douglass (Michigan) 230; *People v. River Raisin & Lake Erie Railroad Co.,* 12 Michigan 389, 395.

In the *Detroit and Windsor Ferry Company* case it might well have been said, as the counsel for the Corporation Tax Appeal Board will undoubtedly argue, that the Ferry Company be required to pay for the privilege of doing corporate business whether it exercised the privilege or not since the Ferry Company had the power and did engage in business other than that of foreign commerce. Quite different is the case at bar where the Detroit International Bridge Company can engage in no business except that of operating this international high-

way bridge, its operations being exclusively devoted to that of foreign commerce. It cannot forcibly or logically be argued that the International Bridge Company be compelled to pay an annual tax for the privilege of doing an intrastate business whether it exercise this privilege or not, since it is not ever within its powers to exercise the privilege of doing intrastate business.

If this tax is imposed for the privilege of doing business upon the Bridge Company, it is and must be imposed upon it for the privilege of engaging exclusively in foreign commerce and nothing else. And clearly to impose a tax upon a corporation for the privilege of engaging in foreign commerce is in violation of the Commerce Clause of the United States Constitution.

CONCLUSION

We respectfully submit that the judgment of the Supreme Court of the State of Michigan should be reversed.

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